St. Margaret Mercy Healthcare Centers *and* Service Employees International Union, Local 73.[1] Case 13–CA–38629

June 29, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On January 30, 2002, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

1. We adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act by applying its no-solicitation/no-distribution rules to the nurses' breakrooms and by removing union literature from the breakrooms. As found by the judge, the Respondent's application of this policy to the breakrooms is overbroad, because it prohibits solicitation in areas that are neither immediate patient care areas nor in close proximity to patient care areas.[4] In view of this finding, we find it unnecessary to pass on the judge's further finding that the Respondent's conduct in this regard demonstrates discriminatory application of its policy and that the Respondent further violated Section 8(a)(1) by "directing its enforcement solely against the Union solicitation," as these further findings would not materially affect the remedy.

2. The judge found, and we agree for the reasons set forth below, that the Respondent violated Section 8(a)(3) and (1) of the Act by disciplining employee Deborah Plenus for soliciting fellow employee Isabella Skurka to sign a union card while Skurka was working at a nurses' station. The Respondent argues in its exceptions that its discipline of Plenus by issuing her a written counseling is not unlawful under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). We disagree.

To prove a violation of Section 8(a)(3) and (1) under *Wright Line*, "the General Counsel bears the burden of proving by a preponderance of the evidence that animus against protected conduct was a motivating factor in the adverse employment action. If the General Counsel makes a showing of discriminatory motivation by proving protected activity, the employer's knowledge of that activity, and animus against protected activity, then the burden of persuasion shifts to the employer to prove that it would have taken the same action even in the absence of the protected activity." *North Carolina License Plate Agency #18*, 346 NLRB No. 30, slip op. at 1 (2006) (citing *Donaldson Bros. Ready Mix*, *Inc*., 341 NLRB 958, 961 (2004)), enfd. 2007 WL 1800600 (4th Cir. Jun. 20, 2007).

We find that the General Counsel has met his burden of showing that Plenus' protected union activity was a motivating factor in the Respondent's issuance of a disciplinary written counseling. The record shows, and the judge found, that Plenus was an "active union supporter" who distributed union materials at the hospital. The record further shows the Respondent's knowledge of Plenus' prounion activity: Plenus directly informed her supervisor, Gini Lester, of her union support. Finally, antiunion animus is established here by the Respondent's unfair labor practices found by the judge, which we are adopting, including its overly broad application of its no-solicitation/no-distribution rule and its threat of reprisal against Plenus (discussed below). Accordingly, we find that the General Counsel has carried his burden of demonstrating that Plenus' protected union activity was a substantial or motivating factor in the Respondent's decision to discipline her. The burden accordingly shifts to the Respondent to prove that the same action would have taken place even in the absence of the protected union activity.

[1] We have amended the caption to reflect the dissafililation of the Service Employees International Union from the AFL–CIO effective July 25, 2005.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall modify the language of the judge's recommended Order to reflect our finding that it is unnecessary to pass on the judge's finding that the Respondent disparately enforced its no-solicitation/no-distribution rules.

[4] See, e.g., *Brockton Hospital*, 333 NLRB 1367, 1368 (2001), enfd. in relevant part 294 F.3d 100 (D.C. Cir. 2002), cert. denied 537 U.S. 1105 (2003); *Healthcare & Retirement Corp*., 310 NLRB 1002, 1005 (1993).

However, in adopting this finding, we do not rely on the judge's statement that the Respondent's antiunion activity in the breakrooms, including posting literature there, is relevant to the lawfulness of the Respondent's interference with employees' prounion solicitation and distribution there. See *d/b/a Hale Nani Rehabilitation and Nursing Center*, 326 NLRB 335 (1998).

The Respondent failed to meet this burden. The Respondent asserts that it disciplined Plenus under its policy prohibiting solicitation at the nurses' station. As found by the judge, however, the credited testimony establishes that employee solicitation at the nurses' stations was a common practice. These included a wide variety of solicitations, including solicitations for Girl Scout cookies, "beach balm" suntan lotion, March of Dimes, United Way, Secretary's Day and Boss' Day, and "going away" parties, birthday parties, and other social occasions. Moreover, these solicitations—none of which related to nurses' duties—were well known to the Respondent: the judge found that management "was not only aware of this activity but participated in it." The record shows that although Plenus received her written counseling for soliciting at the nurses' station, no such written counseling ever issued in response to the large number and wide variety of other solicitations also occurring at the nurses' station. Indeed, the judge found that nurses routinely discussed a wide range of subjects unrelated to their duties at the nurses' stations, with no resultant counseling. In these circumstances, we find that the Respondent's proffered reason for the discipline was a pretext for disciplining her for her earlier prounion activity. "An employer cannot simply present a legitimate reason for its actions but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct." *T&J Trucking*, 316 NLRB 771 (1995), enfd. 86 F.3d 1146 (1st Cir. 1996)(table). Although the Respondent might well have grounds for disciplining employees who solicit in work areas, here the Respondent tolerated such solicitations—except in the case of Plenus. We accordingly find that, by disciplining Plenus because of her prounion activity, the Respondent violated Section 8(a)(3) and (1) of the Act.[5]

3. We adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening employee Plenus with unspecified reprisals in response to her protected concerted activity. The record shows that on August 4, 2000, Plenus was speaking with other nurses about the Respondent's newly implemented employee evaluation process and its effect on the receipt of wage raises by the nurses. Plenus criticized the policy, expressing her concerns that the Respondent would be "holding back" on raises or "not giving them the correct raise," and that the new evaluation process "was just a management ploy" and Respondent's management was not "being truthful" on these matters. This discussion was overheard by the Respondent's manager of therapy, Josita DeHaan-Kicmal, who was treating a patient in the Intensive Care Unit (ICU). DeHaan-Kicmal reported the incident to the Respondent's manager of the Intensive Care and Intermediate Care Units, Gini Lester, who in turn reported it to the Respondent's director of critical care, Linda Ray.

On August 18, Lester and Ray met with Plenus.[6] Ray expressed concern that Plenus' comments were made in the vicinity of a patient's room. Ray further told Plenus that her "negative" comments created a "morale" issue. Ray continued by instructing Plenus that, instead of bringing the staff down, she should report her concerns to management. Ray then told Plenus that similar conduct in the future would be considered under the Franciscan values (general standards of conduct such as respect for life and treating others with compassion), and that this might lead to disciplinary action.

We fully agree with the judge, for the reasons set forth in his decision, that Plenus' comments to coworkers about management policy regarding whether the "correct raises" would be forthcoming under the Respondent's new employee evaluation process, including her criticism of that policy, constitutes protected concerted activity under Section 7 of the Act. The dissent does not dispute this finding. The judge properly relied on the Sixth Circuit's explanation that:

> [P]rohibiting employees from communicating with one another regarding wages, a key objective of organizational activity, undoubtedly tends to interfere with the employees' right to engage in protected concerted activity.

NLRB v. Main Street Terrace Care Center, 218 F.3d 531, 537 (6th Cir. 2000), enfg. 327 NLRB 522 (1999). The judge further found, and we agree, that Plenus' conduct was not sufficiently egregious to remove her activities from the Act's protection. As the Seventh Circuit explained in *Dreis & Krump Mfg. v. NLRB*, 544 F.2d 320 (7th Cir. 1976), "the standard for determining whether specified conduct is removed from the protections of the

[5] We do not share our dissenting colleague's view that the Respondent's unlawful discipline of Plenus is properly evaluated only in the context of a discriminatory no-solicitation/no-distribution rule. We make no such a finding, and accordingly find inapposite the dissent's reliance on *6 West Limited Corp. v. NLRB*, 237 F.3d 767 (7th Cir. 2001). Given that we are finding that the Respondent's discipline of Plenus for violating the Respondent's no-solicitation/no-distribution rule was a pretext for disciplining Plenus for her earlier prounion activity, we find it unnecessary to address whether Plenus' solicitation near a nurses station was protected or whether the Respondent may lawfully ban union solicitations at that location while permitting charitable solicitations.

[6] We correct the judge's inadvertent references to this date as August 27 and then as August 21.

Act [is] as articulated by the Board: communications occurring during the course of otherwise protected activity remain likewise protected unless found to be 'so violent or of such serious character as to render the employee unfit for further service.'" Id. at 329 (quoting *NLRB v. Illinois Tool Works*, 153 F.2d 811, 815 (7th Cir. 1946)). Plenus' conduct was certainly not violent, and we cannot find that it was of such serious character as to lose the protection of the Act.

The Respondent argues in its exceptions that it nevertheless lawfully disciplined Plenus because her conduct interfered with patient care. We agree with our dissenting colleague that actual interference with patient care can constitute a legitimate and substantial business reason for imposing discipline. But the record here shows that patient care was not the reason for Respondent's action toward Plenus. Our review of the evidence of Ray's meeting with Plenus shows that Ray's key concern was the effect Plenus' comments might have on fellow employees, rather than disruption to the care of hospital patients. Although Ray mentioned to Plenus that her comments were made in the vicinity of a patient's room, Ray emphasized that her (Ray's) key concern was the effect on employee morale and, significantly, the manner in which Plenus should raise her concerns about employees' terms and conditions of employment: that she should direct her concerns to management rather than discussing them with her coworkers and "bringing them down." It is axiomatic that discussing terms and conditions of employment with coworkers lies at the heart of protected Section 7 activity. Consequently, we agree with the judge's finding that Ray's conduct toward Plenus constituted an unlawful threat of unspecified reprisal for engaging in protected concerted activity.[7]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, St. Margaret Mercy Healthcare Centers, Hammond, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(b) and reletter subsequent paragraphs.

2. Substitute the following for paragraph 1 (c):

"1(b) Issuing written counselings to its employees because they engaged in protected union activity."

3. Substitute the attached notice for that recommended by the administrative law judge.

Dated, Washington, D.C. June 29, 2007

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN BATTISTA, dissenting in part.

Contrary to my colleagues and the judge, I do not find that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing a written counseling to employee Deborah Plenus, or that the Respondent violated Section 8(a)(1) by making threats of unspecified reprisals to Plenus.

My colleagues contend that the Respondent counseled Plenus for union activity. I disagree. Even assuming arguendo that a reason for the counseling was Plenus' prior union activity, I conclude that her activity in April 2000 was unprotected, and that the Respondent would have counseled her in any event for this unprotected activity.

The facts concerning Plenus' unprotected activity are as follows. On April 18, 2000, Plenus, an ICU nurse, received a corrective action notice for soliciting fellow employee Isabella Skurka to sign a union card while Skurka was working at a nurses' station. Although the record shows that employees had engaged in solicitation at the nurses' stations in the past, these solicitations, with one exception, were charitable or social in nature rather than commercial.[1]

Contrary to the judge and my colleagues, I find that the record fails to establish that the Respondent's discipline of Plenus was unlawful. First, the Respondent could lawfully prohibit solicitation at the nurses' stations because these stations are immediate patient care areas. Indeed, the Respondent maintained valid rules with respect to patient care areas. The Respondent's nurses' stations were open areas located in hallways adjoining patients' rooms. Thus, patients were free to move about in the corridors, or were moved about for medical pur-

[7] Accordingly, we cannot agree with the dissent that Respondent's action reflected concern about patient care. There is no evidence that the Respondent prohibited employees from discussing other matters in the vicinity of patients' rooms even though such conduct might have a similar impact on patients. This further suggests that Respondent was not acting out of a concern that Plenus' conduct interfered with patient care.

[1] The record shows that employees have been solicited regarding Girl Scout cookies, suntan lotion, March of Dimes, United Way, and "going away" and birthday parties. The suntan lotion was a "concoction" that an agency nurse mixed in her blender.

poses. They could easily hear what the employees were discussing at the nurses' stations. Further, it is undisputed that, at all hours of the day, relatives of patients would consult with nurses at the nurses' stations about the health status of patients. Consequently, the Respondent had a legitimate concern that patient care should not be compromised by distractions.[2]

I disagree with my colleagues' contention that the no-solicitation/no distribution rule was discriminatorily enforced at the nurses' stations. The record shows that, with one exception (i.e., the solicitations concerning suntan lotion), the solicitations that occurred in these areas were all charitable or social in nature. The solicitation for the Union was not of this character. In my view, an employer can permit charitable solicitations without opening the door to Section 7 conversations. An employer can draw a lawful line between charitable/social solicitations and commercial solicitations. Solicitations for a union fall into the latter category.[3]

Of course, it could be argued that commercial solicitations are not inherently more disruptive to patient care than charitable/social solicitations, and thus an employer cannot prudently forbid the former and permit the latter. However, the Board's task is not to second-guess the wisdom of an employer's practices. The Board's task is only to forbid an employer from discriminating along Section 7 lines. The Respondent here has not engaged in such discrimination. It has drawn a line between unlike subjects (commercial vs. charitable/social). That is not discrimination along Section 7 lines.

I recognize that an employee attempted to sell suntan lotion, a commercial activity. However, a one-time effort to sell suntan lotion is not likely to cause the kinds of controversies that are typically involved in an ongoing effort to unionize. Thus, I do not agree that this one instance opens the floodgates for unrestricted union organizing in this patient care area.

In short, the Respondent's prohibition of union solicitation in these patient care areas was nondiscriminatory and was permissible, and the discipline of Plenus for solicitation was lawful.

As noted above, I also disagree with my colleagues that the Respondent violated Section 8(a)(1) by allegedly making threats to employee Plenus. The record shows that Plenus was overheard making critical remarks about the Respondent's new evaluation process. These comments were made to two other employees at a nurses' station. In response, the Respondent expressed its concern to Plenus that her comments were made in the vicinity of a patient's room. This concern clearly implicated patient care. Plenus was also told that similar conduct in the future, i.e., in this patient care area, might lead to disciplinary action.

Clearly, a hospital has a legitimate interest in not having employer-employee disputes aired within earshot of patients. It is reasonable for a hospital to make the judgment that such conduct would be upsetting to patients and thus detrimental to patient care. The Respondent could lawfully apply its no-solicitation/no-distribution rules to this patient care area.

My colleagues contend that Plenus' remarks concerned a Section 7 matter and that the Respondent did not act because of its concerns about patient care. With respect to the first contention, I agree that employees have a Section 7 right to discuss wages and evaluations. However, as noted above, the employer can forbid the same in patient care areas. With respect to the second matter, the Respondent expressly told Plenus that her comments were made in the vicinity of a patient's room. Further, an employer need not wait for an actual interference with patient care before taking action with respect to conduct in a patient care area. It is the *potential* for such interference which permits an employer to limit Section 7 activity in patient care areas. (Emphasis added.)

Accordingly, I find that the Respondent's comments to Plenus did not violate the Act.

Dated, Washington, D.C. June 29, 2007

Robert J. Battista , Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[2] See *Intercommunity Hospital*, 255 NLRB 468, 472 (1981), (ban on solicitation at nurses' stations valid where the evidence showed the ban was justified to prevent disruption to patient care or disturbance to the patients); *NLRB v. Baptist Hospital, Inc*., 442 U.S. 773, 784 (1979), (upholding rules restricting solicitation in areas where doctors conferred with patients' families).

[3] See, e.g., *6 West Limited Corp. v. NLRB*, 237 F.3d 767, 780 (7th Cir. 2001) (employer's prohibition of union solicitation not discriminatory even though employees were permitted to engage in solicitations for Girl Scout cookies, Christmas ornaments, hand-painted bottles, etc.). Contrary to the suggestion of the majority, I do not cite *6 West* because of any "discriminatory no-solicitation no-distribution rule." I cite it simply to show judicial approval of the concept that an employer's permission for charitable-social activities does not mean that it is required to grant permission for union activities.

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT apply the Hospital's no-solicitation and no-distribution rules to nonpatient care areas including the nurses' breakrooms and remove union literature from the breakrooms.

WE WILL NOT issue written counselings to our employees because they engaged in protected union activity.

WE WILL NOT threaten our employees with unspecified reprisals in retaliation for their protected union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the written verbal notice we issued to Deborah Plenus and, within 3 days thereafter, notify her in writing that this has been done and that the warning will not be used against her in any way.

ST. MARGARET MERCY HEALTHCARE CENTER

Diane Emich and Claire Brosnan, Esqs., for the General Counsel.

Jeffrey C. Kauffman and *James R. Cho, Esqs*. (*Seyfarth & Shaw*), of Chicago, Illinois, for the Respondent.

Denise S. Poloyac, Esq., of Chicago, Illinois, for the Union.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried on May 1 and 2, 2001, in Chicago, Illinois. The charges in Case 13–CA–38269 were filed by the Service Employees International Union, Local 73, AFL–CIO, CLC (Union) on June 13, 2000. The charges were amended on August 25, 2000. The complaint issued on November 30, 2000, alleging that St. Margaret Mercy Healthcare Centers (Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by applying its rule prohibiting union solicitation and distribution to nonpatient care areas and by selectively and disparately prohibiting union solicitations and distributions; by threatening an employee with unspecified reprisals for exercising her Section 7 rights; and by issuing a written warning against an employee because of her union activities. The Respondent filed an answer on December 12, 2000, admitting certain jurisdictional allegations and denying that it had committed any unfair labor practices.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, St. Margaret Mercy Healthcare Centers, a corporation with an office and place of business in Hammond, Indiana (North Campus), and in Dyer, Indiana (South Campus), is an acute care hospital providing inpatient medical Healthcare. With gross revenues in excess of $250,000 and having received at its facilities products, goods, and services valued in excess of $5000 from points directly outside the State of Indiana, the Respondent is admittedly engaged in commerce and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union, Service Employees International Union, Local 73, AFL–CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

In the fall of 1999, the Union began a campaign to organize Respondent's registered nurses. On March 17, 2000, the Union filed a petition to represent the registered nurses at Respondent's North Campus and South Campus facilities. A representation election was held on May 18, 2000, in which the Union lost.

Respondent has maintained a solicitation and distribution policy since at least 1995, ever since the Teamsters attempted to organize another one of the Respondent's facilities, St. Anthony's Hospital. The Respondent's policy is contained in an employee handbook disseminated to the employees and in each department's administrative guideline book. The relevant section of the employee handbook, under the heading "Solicitations, Distributions, Tips and Gratuities," states that "employees may not solicit or distribute any written material during working time." But this section lists a series of charitable and mission related causes which are considered "permissible forms of solicitation" (R. Exh. 6).

The administrative guideline manual sets forth the Respondent's policy more comprehensibly (G.C. Exh. 3). Section 1.3 of the manual reads:

> Employees are prohibited from soliciting other employees or distributing any materials for any purpose during the scheduled or assigned working times of either the employee engaging in such activity or employees at whom such activity is directed.

Two provisos, section 1.3.1 and section 1.3.2, qualify the rule. Section 1.3.1 states that the "restriction on solicitation and distribution by employees do not apply during break periods and meal times," and section 1.3.2 states that:

> Employees are prohibited from soliciting other employees or distributing any materials *at any time* [emphasis added] in patient care areas. Patient care areas include patient rooms, operating rooms, places where patients receive treatment (e.g. x-ray and therapy areas), halls and corridors adjacent to the above, and other areas adjoining or accessible thereto which

> are used by patients for patient care, therapy procedures, movement to and from treatment, consultation with staff, and as waiting areas for patients.

Section 1.4 of the manual prescribes where distribution is allowed during nonworking time:

> During non-working time (e.g., break time or meal time), distribution of materials is allowed only in non-work areas (e.g., employee locker rooms, employee restrooms, employee break areas, or meal rooms).

During the Union's organizing drive, Respondent's management held meetings to inform the nurses of the Respondent's distribution and solicitation policy. In apparent conflict with its written policy, nurses were told that solicitation and distribution were not allowed in the lounges or breakrooms,[8] because such areas were patient care areas, and that the Hospital wanted to avoid a "hostile environment" close to where the patients were treated.

The interpretation of the no-solicitation policy was applied in Respondent's North and South campuses, in three main areas: the intensive care unit (ICU), the intermediate care unit (IMCU), and the 3A unit of the behaviorial health department (Adult Psych.). The record shows that the "lounge," (the multipurpose room or the breakroom) located opposite the patient rooms and is usually separated by the nurses' station (G.C. Exh. 2, R. Exhs. 2, 4). It is uncontested that patients do not receive treatments in these rooms.

Linda Ray, director of critical care, testified that she consulted with upper management and then met with her five managers, Blanca Conrad, Karen Bogdan, Joan Dorman, Gini Lester and Cam Adams. She said, "There was some question as to . . . what the lounges were" (Tr. 337). According to the testimony, the lounges or multipurpose rooms were initially regarded as "non-patient areas." But once the union campaign began, managers declared "that union discussion, employees could not have any discussion in those areas namely because they were in patient care areas" (Tr. 338). Ray further testified that she instructed her managers to communicate this to their staffs.

Mary Jo Goins, manager of Adult Psych., and Dr. Philip Helding, director of behaviorial health, held staff meetings in unit 3A, Adult Psych. in the fall of 1999 reminding the 12–15 staff personnel (nurses and therapists), that there would be no solicitation of any kind in the breakroom, because it was considered a patient care area (Tr. 209).

Similarly in the ICU South, Gini Lester, manager of ICU and IMCU, informed her staff on February 17, 2000, that they could not talk about the Union nor post union material in a patient care room. According to her testimony, patient areas included the breakroom and the nurses' station. She held a similar meeting in March with the evening shift nurses, telling them about the prohibitions on union solicitation in the breakroom. Ray had explained to Lester that the facility is "her house and that she gets to decide the rules." (Tr. 33.)

[1] The room is also known as the reporting room. Nurses referred to it as breakroom and Linda Ray used the term, lounge.

In March 2000, Blanca Conrad, manager in ICU North, conducted meetings about the Union. Geri Jaracz, a nurse in ICU North, recalled that she had a meeting with her supervisors, Conrad and Ray, during which the solicitation and distribution policy was discussed. Jaracz credibly testified that both Conrad and Ray told her that flyers were prohibited at the Hospital, and that nurses were not permitted to discuss the Union, not even in the cafeteria.

Geri Jaracz also testified that Conrad entered the North Campus ICU in late March 2000 multipurpose room and tore down flyers from the bulletin board and stated "all areas are patient care areas." Conrad specifically denied having ever made such statements or removing union material in front of other workers, but she admitted in general that she had removed union literature from the staff lounges.

On May 5, 2000, Judith Barkow, a staff nurse in 3A Psych., was informed by Linda Thompson, director of behavioral health, that other workers had complained that Barkow had been distributing union materials in the multipurpose rooms. Thompson told her that such distributions were not permitted. The complaints came from Cindy Williams and Margaret Markovich, who were managers in 2A and 4A, respectively. Barkow made an effort to defend herself, by referring to the written solicitation policy and by claiming that the breakroom should not be regarded as a patient care area.

Deborah Plenus, an ICU South nurse, received a corrective action notice, dated April 18, 2000, in connection with a union related incident. Plenus was an active union supporter and had informed her supervisor, Lester, of her union support. Plenus testified that she distributed union materials at the Hospital, and that her postings were always taken down. In April 2000, Plenus approached Isabelle Skurka, a clinical nurse educator, in the ICU South. On this occasion she asked Skurka to sign a union card. Skurka refused to sign the card. Despite her first rejection, Plenus approached Skurka who was seated behind the nurses' station 2 weeks later and asked her to sign a card, stating jokingly or laughingly, "I'm serious." Skurka testified that she told management about the second incident, because she felt that solicitations in the ICU were a distraction to her job and also inappropriate, and because she felt "pursued." On April 18, Lester met with Plenus to discuss the Skurka incident. Lester told Plenus that she could not solicit employees at the nurses' station while employees were working. Lester issued Plenus the written corrective action notice (G.C. Exh. 19).

On August 4, 2000, Josita DeHaan-Kicmal, a manager of therapy at the South Campus, overheard Debbie Plenus speaking critically to other nurses about the Respondent's new evaluation process. DeHaan-Kicmal testified that "the nurse specifically Debbie Plenus made a comment to the effect that this was just a manager ploy and they [management] weren't being truthful" (Tr. 289). Because DeHaan-Kicmal felt uncomfortable about the situation, she reported the incident to Lester, who reported it to Ray. In her testimony, DeHaan-Kicmal described Plenus' tone as negative and so loud that others could hear it. On August 18, Lester and Ray met with Plenus. Plenus was told that the behavior was completely inappropriate, and would not be tolerated in front of patients. At Ray's request, DeHaan-Kicmal provided a written statement of the incident

(G.C. Exh. 28). Ray testified that during the meeting she expressed her concern that the comments were overheard in the vicinity of a patient's room, that Plenus created a morale issue, and that instead of bringing the rest of the staff down creating low morale, she should report her concerns to management. Ray also informed Plenus that similar conduct in the future would be considered under the Franciscan values,[2] which might lead to disciplinary action.

ANALYSIS

The no-solicitation rule. The complaint alleges that the Respondent enforced the no-solicitation rule selectively and disparately by prohibiting union solicitation and by applying the rule to nonpatient areas. The record shows that the Respondent applied its policy to the breakrooms, also referred to as the multipurpose rooms and that it applied the policy in a discriminatory or disparate manner. Indeed, the record is uncontradicted that the breakrooms were included in the prohibition. In its brief, the Respondent summarizes the record as follows (R. Br. p. 12):

> Before and during the organizing campaign, Hospital managers held meetings with nurses to remind them about the Hospital's solicitation and distribution policy and to remind them that the policy prohibits such activities in patient care areas. Linda Ray held meetings with the managers responsible for ICU (North and South) and IMCU (South), to remind them to reinforce with staff that the Hospital's policy prohibited solicitation and distribution in patient care areas including the multipurpose rooms. The Hospital prohibited solicitation and distribution in the multipurpose rooms because they were considered patient care areas and the Hospital did not want to create a potentially "hostile environment" close to areas where patients are being treated.

The Respondent also concedes that the prohibition was similarly communicated to the managers in the behavioral health department. More specifically, the Respondent admits that on February 17, 2000, "Lester instructed the nurses not to talk about the Union or post campaign materials in patient care areas, including the multipurpose room and nursing station" (R. Br., p. 13). The record also shows that management removed union literature from the multipurpose rooms from time to time and informed the nurses that they were not allowed to solicit for the union or to place union materials in the breakroom.

In *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 507 (1978), a leading case on no-solicitation and no-distribution rules, the Court stated:

> We therefore hold that the Board's general approach of requiring health-care facilities to permit employee solicitation and distribution during nonworking time in nonworking areas, where the facility has not justified the prohibitions as necessary to avoid disruption of health-care operations or disturbance of patients is consistent with the Act.

Any rules, which prohibit employees' solicitation in Healthcare facilities in areas, which are not considered immediate patient care areas, are presumptively invalid. Id. at 508. Significantly, it is well settled that "immediate patient care areas" have been described as "patients' rooms, operating rooms, and places where patients receive treatment, such as x-ray and therapy areas." *St. John's Hospital*, 222 NLRB 1150 (1976), enfd. in part 557 F.2d 1368 (10th Cir. 1977), and cited in *Baptist Hospital*, 442 U.S. 773, 781 (1979). For example, a rule prohibiting "soliciting or distributing materials during working time or in any work area or resident care area" was held to be overly broad, because such a ban must be limited to immediate patient care areas. *Healthcare & Retirement Corp.*, 310 NLRB 1002, 1005 (1993). In *Brockton Hospital*, 333 NLRB 1367 (2001), the Board reaffirmed its long standing holding, stating in part:

> We adhere to the Board's established precedent. Under that precedent, a hospital's prohibition of solicitation or distribution of literature in immediate patient care areas, even during employees' nonworking time, is presumptively lawful. Restrictions on solicitation, during nonworking time, or distribution of literature, during nonworking time and in nonworking areas, however, are presumptively unlawful even with respect to areas that may be accessible to patients. The Supreme Court has upheld these presumptions as consistent with the Act, and we find no support in the record of this case for departing from these well-settled principles.

Under this standard, the General Counsel is correct in observing that the written policy contained in the employee handbook and the policy manual is valid on its face, but overbroad when applied to the breakroom or multipurpose rooms. These areas can hardly be described as "immediate patient care areas." It is uncontested that patients do not receive any treatment in the breakrooms located in the ICU or the IMCU at the South Campus or the ICU at the North Campus, neither are patients brought or treated in the breakroom at the Adult Psych. area. Neither patients nor family members of patients enter the breakrooms. Instead, these rooms are used as breakrooms for nurses, in which they regularly eat lunch, take breaks, and hold meetings, including work related meetings and social gatherings for potlucks, pizza parties, and holiday and birthday parties.

The Respondent has argued that the multipurpose rooms are located as close as 18 to 20 feet to the nearest patient room, that the doors are usually left open, and that the rooms are used for work related activities, such as Tuesday for rounds and meetings with social workers, dietary specialists, and nurse case managers. On other occasions, according to the Respondent, the rooms are used for staff meetings, reviewing or completing patient charts, and for unit discussions. However, the Respondent has not established that these breakrooms should be considered immediate patient care areas, to permit Respondent's restrictions on solicitations and distributions. This is particularly so because, as more thoroughly discussed below, the Respondent tolerated the distribution of materials and solicitations for numerous other causes.

[2] These are general standards of conduct such as respect for life, treat others with compassion, Christian Stewardship, etc. (Tr. 379.)

Moreover, the Respondent also failed to show that the banned solicitation or distribution of materials in the breakroom adversely impacts patient care. *Baptist Hospital*, 442 U.S. at 781. There has been no showing that patient care was in any way compromised by such activities in the breakrooms, which were obviously furnished as breakrooms with refrigerators, coffee machines, and televisions. The disputed area is not one which patients, especially those who are fragile or in critical condition frequent, nor are patients transported through these areas. The breakrooms provide natural gathering areas for the nurses and are not public rooms or sitting areas where patients meet with families or friends, or where patients confer with their doctors. Indeed, testimony shows that patients cannot hear what is going on in the breakrooms even when the doors were left open. A patient may observe from time to time that nurses congregate in the breakrooms, especially on special occasions for such events as holiday or birthday parties and patients may even hear a birthday song. Under such circumstances, it is difficult to fathom how union solicitations or the passing out of union literature in the breakrooms would be noticed by patients as an unusual event or somehow disturb their care or create an atmosphere different from the norm. That the breakrooms are in close proximity to patients' rooms is not supported by the Respondent's own diagrams which show that the breakrooms are located in the corridor opposite patients rooms and to some extent separated by the nurses' stations (R. Exhs. 2 and 4; G.C. Exh. 2). The Respondent's argument is also belied by its own practice of permitting antiunion dialogues in the breakroom as well as the posting of antiunion literature. *Fairfax Hospital*, 310 NLRB 299 (1993).

The Respondent submits that other nonwork areas were available to the employees such as the cafeteria, lobby, locker room, and bathrooms. However, the record shows that a great deal of confusion existed among members of management as to exactly which area could be used by the employees for their union activity. There was testimony that the cafeteria could be used; yet several employees were under the impression that no area within the Hospital was permitted for solicitations and distributions. Moreover, the cafeteria is located in the North Campus and accordingly inaccessible as a practical matter to the nurses in the South Campus, located in a different town. That locker rooms were available was not clearly communicated to the nurses. In short, the Respondent failed to make an area available or communicate to the employees that a particular location was appropriate as a nonworking area.

The Respondent, having failed to justify the validity of its broad policy prohibiting union solicitations and union literature in the breakroom as disruptive of patient care, violated Section 8(a)(1) of the Act.

The complaint alleges that the Respondent also applied its solicitation and distribution policy in a discriminatory manner. Accordingly, even if the Respondent had prevailed on its argument that its policy was not overly broad and therefore lawful, the record clearly shows that the Hospital applied its policy in a disparate manner. Not until the Union began its campaign in late 1999, were supervisors told to enforce the policy against solicitation and distribution in the breakrooms. For example, Linda Thompson, who is responsible for five managers in the behavioral health unit, testified that she learned the rules about the solicitation and distribution policy from the meetings with consultants after the union petition was filed and that the lounges were considered patient care areas. Blanca Conrad also recalled that she learned about the rules regarding the solicitation policy during educational meetings with management in the spring 2000. Similar testimony came from Ginni Lester and Linda Ray. The Board has held that the precipitous enforcement of a presumptively valid rule in response to a union campaign reveals a discriminatory motive and therefore violates Section 8(a)(1) of the Act. *Youville Healthcare Center*, 326 NLRB 495 (1998). Moreover, the record is replete with information that the Respondent did not enforce its policy in the breakrooms for other causes. This, despite management's awareness that nurses solicited for Avon products, Girl Scout cookies, Taffy Apples and Pampered Chef in the presence of Lester in the ICU breakrooms. Employees solicited for the sale of candy, for the March of Dimes, Relay for Life, and for the sale of personal items, including houses and cats. The record shows that this activity occurred in the breakrooms in 3A Psych. as well as the ICU (G.C. Exhs. 8–15). Only after the filing of a charge in this case, was one of the nurses asked to remove a solicitation for Girl Scout cookies.

The record clearly supports the allegations in the complaint that the Respondent did not apply its prohibitions on solicitation and distribution in a uniform manner. Specifically, management made an obvious effort to stifle union solicitation and distributions. In disagreement with the Respondent, I find that the evidence did not merely show sporadic and isolated instances of solicitation, but it showed that for a period of years, nurses took it for granted that the breakroom and its bulletin board were appropriate for the types of solicitations represented in the various photographs which clearly show commercial advertisements, as well as items for sale (G.C. Exhs. 4–17). Testimony reveals that these items were typical manifestations of a practice, which the Respondent tolerated before and during the time of the union drive. Moreover, during the same time, the Respondent posted its own antiunion literature in the breakrooms. Under these circumstances, the record clearly shows a pattern of discriminatory application of the solicitation and distribution policy. Accordingly, even if the Hospital's policy were regarded as valid, directing its enforcement solely against the union solicitation renders the practice unlawful. *Mercy General Hospital*, 334 NLRB 100 (2001); *Vincent's Hospital*, 265 NLRB 38 (1982), enfd. in part 729 F.2d 730 (8th Cir. 1984).

The Discipline of Deborah Plenus. On April 18, 2000, the Respondent issued an "Employee Corrective Action Notice" to Debbie Plenus, which states: "At 5 p.m. on 4/10 by the nurses station at ICU South you approached another R.N., from another department who came to ICU to perform her job duties, requesting that she sign a union card." (G.C. Exh. 19.) The notice further stated: "You are expected to follow SMM policies in regards to distribution and solicitation on hospital property." Although the written counseling was not placed in the file maintained by the human resources office, it was made a part of the manager's file and would be considered for future disciplinary action.

The complaint alleges that the Respondent's conduct in this regard violated Section 8(a)(3) of the Act as discriminatory. The record shows that the brief statement in the notice is an accurate summary of Plenus' solicitation efforts on April 4, 2000. Plenus, a registered nurse in the ICU, was an active union supporter who had signed a union card, who openly solicited for the Union, and who frequently posted various union literature in the breakrooms. She admitted that she had asked a nurse at the nurses' station during worktime to sign a union card. This was perceived by management as a clear violation of the Respondent's solicitation and distribution rules.

I find it significant that the gravamen of Plenus' alleged misconduct consisted of a verbal request or a mere remark rather than activities related to postings of written materials or to collect money. The General Counsel argues that the application of the no-solicitation policy to Plenus' activities at the nurses' station was unlawful for two reasons: first, the Respondent failed to prove that the nurses' station was an immediate patient care area or that union solicitation would disrupt or interfere with patient care.[3] Second, according to the General Counsel, the Respondent's prohibition against union solicitation at the nurses' station was discriminatory because the record shows that numerous forms of solicitations for other causes were usually tolerated at the nurses' station. Several witnesses provided unequivocal testimony that solicitations at the nurses' station was a common practice. For example, Plenus testified that she observed nurses engage in solicitations for cookies, March of Dimes, United Way and others at the nurses' station. She saw envelopes for collections for going away parties and birthday parties at the nurses' station. She was solicited at the ICU South nurses' station by a nurse trying to sell Beach Balm lotion in the presence of Lester. Lester did not prohibit the practice even though the incident occurred shortly after the union election. Dorothy Hopper testified that the nurses would collect money at the nurses' station for potluck parties or birthday parties and that the collection would usually last 2 to 3 weeks. Collections were also conducted for bereavement purposes. Management was not only aware of this activity but participated in it. Judith Barkow, staff nurse at 3A Psych., similarly recalled that collections for social events were solicited at the nurses' station on the medication cart. Lester testified about collections for going away gifts, for secretary's day, or boss' day occurring at the nurses' station. The testimony of Isabelle Skurka, a nurse educator, supported the notion that solicitations at the nurses' station was not uncommon (Tr. 400): I see like signs for putting money in an envelope for people going away. Those kinds of things." Barkow testified that her supervisor, Goins, contributed to her solicitations for the March of Dimes. Furthermore, nurses discussed a range of subjects unrelated to their duties or the work at the nurses' station without being reprimanded. Geri Jaracz, a nurse in the ICU, North Campus, similarly testified that solicitations for social occasions occurred at the nurses' station. Virtually every witness testified that the nurses engaged in conversations about subjects unrelated to their duties without being reprimanded. I must therefore reject the Respondent's arguments that solicitations at the nurses' station was sporadic and isolated and, in any case, not known by management.

Plenus' reprimand was based on her oral request to a coworker to sign a union card, not related to any distributions or postings of union materials. I, accordingly find that the prohibition directed against union talk and union solicitation, while permitting nonwork discussions and solicitations was discriminatory. *Mercy General Hospital*, 334 NLRB 100 (2001). As the Board decided in *Cooper Health System*, 327 NLRB 1159 (1999), an employer violates Section 8(a)(3) when an employee is disciplined as a result of an unlawful application of a no-solicitation rule.

Threats of reprisals. The complaint alleges and the General Counsel, as well as the Charging Party, argue that the Respondent made unspecified threats of reprisals directed at Deborah Plenus because of her protected concerted activity.

On about August 27, 2000, Linda Ray and Ginni Lester, met with Plenus and informed her that she was overheard making derogatory comments about management. The person who overheard the incident and who reported it to management was Josita Dehaan-Kicmal, a manager and physical therapist at the South Campus in August 2000. She testified that in early August 2000, she was treating a patient in the ICU, a patient care area across the center of the nurses' station, when she overheard a conversation among three employees. Plenus, another nurse and a ward clerk talked about the annual employee review process. Dehaan-Kicmal summarized the substance of the conversation in her testimony as follows (Tr. 289):

> Well, I overheard a conversation regarding the changes in the nursing annual employee appraisal process. And they were discussing how things had changed and now their eval dates had been moved back. And so they were going to be late. And then their dissatisfaction with that process. The Ward Clerk, since they were kind of, obviously not happy with it, the Ward Clerk, I recall, did say something about that the Nurse Manager had brought up the reasons why the timing or something had changed. And then the and then the nurse specifically Debbie Plenus made a comment to the affect that this was just a manager ploy and they weren't being truthful.

Convinced that Plenus' comments were inappropriate in a patient care area, she reported it to Lester on August 17, 2000. Several days later she received a call from Ray who asked her to prepare a memorandum about the incident (G.C. Exh. 28).

At the meeting on about August 21, 2000, Ray communicated her concerns to Plenus, pointing out that her criticism of management was expressed in the vicinity of a patient room who might have heard discussion, that negative comments created a morale issue, and that such comments should be made to management. During the meeting, Ray also referred to Franciscan values (Tr. 380):

> I laid out the expectation that she was to adhere to the Franciscan Values and that this discussion that could lead to corrective action. I think she need to hear that.

[3] Because of my finding that the policy was not uniformly enforced, and violative of the Act, I have not addressed the General Counsel's alternate theory.

Plenus' version of this scenario differs only slightly, but she recalled that Ray also stated that a notation of this meeting would be placed in her personnel file and further that she could leave if she was unhappy with her job. I credit Ray's version of the conversation and find that the reference to Franciscan values amounted to a warning by management that similar conduct in the future would result in disciplinary or corrective action. In agreement with the General Counsel and the Charging Party, I find that Plenus had a conversation with two other employees about their working conditions at the Hospital. Her critical comments of management was protected by Section 7 of the Act and constituted protected concerted activity, even if her remarks could be interpreted to accuse management of dishonesty. Her conduct was not so egregious, contumacious, or injurious to management so as to render the employee unfit for service. *Marietta Corp.*, 293 NLRB 719, 725 (1989). The Respondent failed to point to any rule or policy in the facility prohibiting employees from speaking with each other or engaging in discussions about matters unrelated to their work. The mere fact that DeHaan-Kicmal considered the conversation inappropriate in a patient care area does not show that such conduct interfered with patient care. In *Eastex, Inc. v. NLRB,* 437 U.S. 556, 565 (1978), the Court interpreted Section 7 of the Act that employees are protected under the "mutual aid or protection" clause when they seek to improve their lot as employees. While "mere talk is sufficient to put a worker in contact with his fellow employees," it presumes group action to come within the protection of Section 7. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied mem. 474 U.S. 971 (1985).[4] In *Meyers Industries,* 281 NLRB 882, 887 (1986), the Board reaffirmed its position that Section 7 of the Act extends to concerted activity which in its inception involves only a speaker and a listener, for such an activity is the preliminary step to group action. Although the record does not show that Plenus and the two other employees were contemplating group action as they discussed the evaluation process and the "correct raises," it is obvious that discussions of this kind usually precede group action.[5] In *NLRB v. Main Steel Terrace Care Center*, 218 F.3d 0531 (6th Cir. 2000), the court upheld a violation of Section 8(a)(1) of the Act when the employer promulgated a rule prohibiting employees from discussing wages with one another. The court stated as follows (Id. at 537)

> A rule prohibiting employees from communicating with one another regarding wages, a key objective of organizational activity, undoubtedly tends to interfere with the employees' rights to engage in protected concerted activity.

I accordingly find that the Respondent interfered with the employee's Section 7 rights, and the right to engage in protected concerted activities, and that the Respondent had violated Section 8(a)(1) of the Act.

[4] See Meyers Industries, 268 NLRB 493 (1984).

[5] The allegation that the Respondent's action was a result of the employee's union activity and the charge filed with the NLRB was not substantiated as the record does not show that Ray was aware of these developments at the time of her discussion with Plenus.

CONCLUSIONS OF LAW

1. The Respondent, St. Margaret Mercy Healthcare Centers, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Service Employees International Union, Local 73, AFL–CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By applying the Hospital's no-solicitation/no-distribution rules to nonpatient care areas, including the nurses' breakrooms and by removing union literature from the breakrooms, the Respondent violated Section 8(a)(1) of the Act.

4. By enforcing the Hospital's no-solicitation and distribution rules selectively and disparately by prohibiting union solicitations and distributions while permitting nonunion solicitations and distributions at the South Campus and the North Campus, the Respondent violated Section 8(a)(1) of the Act.

5. By issuing a written counseling to Deborah Plenus for engaging in union solicitations at the nurses' desk, while permitting nonunion discussions and solicitations at the nurses' desk, the Respondent violated Section 8(a)(1) and (3) of the Act.

6. By threatening an employee with unspecified reprisals in retaliation for her protected concerted activity, the Respondent violated Section (1) of the Act.

7. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, St. Margaret Mercy Healthcare Centers, Hammond and Dyer, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Applying the Hospital's no-solicitation and no-distribution rules to nonpatient care areas, including the nurses' breakrooms and removing union literature from the breakrooms.

(b) Enforcing the Hospital's no-solicitation and no-distribution rules selectively and disparately and prohibiting union solicitations and distributions while permitting nonunion solicitations and distributions at the South Campus and the North Campus.

(c) Issuing written counselings to its employees for engaging in union solicitations at the nurses' desk, while permitting nonunion discussions and solicitations at the nurses' desk.

(d) Threatening its employees with unspecified reprisals in retaliation for their protected concerted activities.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from Respondent's files any reference to the written verbal warning notice, which it issued to Deborah Plenus and within 3 days thereafter, notify her, in writing, that this has been done and that the warning will not be used against her in any way.

(b) Within 14 days after service by the Region, post at its facilities in Hammond and Dyer, Indiana, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 17, 2000.

(c) Within 21 days after receiving service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 30, 2002

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT apply the Hospital's no-solicitation and no-distribution rules to nonpatient care areas including the nurses' breakrooms and remove union literature from the breakrooms.

WE WILL NOT enforce the Hospital's no-solicitation and no-distribution rules selectively and disparately and prohibit union solicitation and distributions at the South Campus and the North Campus.

WE WILL NOT issue written counseling to our employees for engaging in union solicitations at the nurses' desk while permitting nonwork discussions and solicitations at the nurses' desk.

WE WILL NOT threaten our employees with unspecified reprisals in retaliation for their protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the written verbal warning notice we issued to Deborah Lenus and, within 3 days thereafter, notify her in writing that this has been done and that the warning will not be used against her in any way.

ST. MARGARET MERCY HEALTHCARE CENTERS